

1 THE HONORABLE JOHN C. COUGHENOUR
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10 UNITED STATES DISTRICT COURT
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WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

P.W. ARMS, INC., a
Washington corporation,

Plaintiff,

v.

UNITED STATES OF AMERICA and the
BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES, a Federal
Agency,

Defendants.

No. 2:15-cv-01990 JCC

**[PROPOSED] ORDER
GRANTING PLAINTIFF P.W.
ARMS, INC.'S FED. R. CIV. P.
56 PARTIAL SUMMARY
JUDGMENT MOTION UNDER
ADMINISTRATIVE
PROCEDURE ACT**

This matter came before the Court on Plaintiff P.W. Arm's Fed. R. Civ. P. 56 motion for
partial summary judgment under the Administrative Procedure Act.

After having considered the motion, papers filed in opposition, the certified
administrative record, and the pleadings on file, the Court hereby finds that there is no genuine
issue of fact as to whether Defendant ATF's classification of 7N6 5.45x39mm ammunition
(7N6) as 'armor piercing' under 18 U.S.C. § 921(a)(17)(B)(i) is inconsistent with the statute's
plain language and clear Congressional intent. As a matter of law, such classification is
inconsistent and hence unlawful.

1 THE COURT HEREBY FINDS, CONCLUDES AND ADJUDGES that 7N6 contains a
 2 projectile core constructed partially from lead. Hence, it cannot be armor piercing under 18
 3 U.S.C. § 921(a)(17)(B)(i).

4 The term “armor piercing ammunition” means— a projectile or projectile core which
 5 may be used in a handgun and which is constructed **entirely** (excluding the
 6 presence of traces of other substances) from one or a combination of tungsten
 7 alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium[.]

8 18 U.S.C. § 921(a)(17)(B)(i) (emphasis added).

9 Under this unambiguous definition, armor piercing ammunition must be constructed
 10 **entirely** from one or a combination of seven specified metals. Lead is not one of those metals.
 11 Indisputably, 7N6 contains a projectile core constructed partially from steel and partially from
 12 lead; as such, it is not, as a matter of law, a projectile core constructed **entirely** from steel. ATF
 13 acted contrary to the plain language of the statute and to clear Congressional intent when it
 14 classified 7N6 as armor piercing under 18 U.S.C. § 921(a)(17)(B)(i). Under the Administrative
 15 Procedure Act, this classification is not in accordance with the law and is in excess of ATF’s
 16 statutory and jurisdictional authority. As such, ATF’s April 7, 2014 “special advisory” regarding
 17 7N6 (Administrative Record 37) is unlawful.

18 PWA is a prevailing party under 28 U.S.C. § 2412, and this Court will entertain a motion
 19 for costs and attorney’s fees on behalf of PWA.

20 Accordingly, IT IS ORDERED that Plaintiff P.W. Arms, Inc. be granted partial summary
 21 judgment under Fed. R. Civ. P. 56 because, as a matter of law established by the administrative
 22 record, ATF’s classification of 7N6 as armor piercing under 18 U.S.C. § 921(a)(17)(B)(i) is
 23 contrary to the statute’s unambiguous language and clear Congressional intent;

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 26 Further, IT IS ORDERED that ATF’s classification of 7N6 as armor piercing is unlawful,
 27 and this classification is set aside;

Further, IT IS ORDERED that ATF shall classify 7N6 as lawful for importation, sale and distribution to federally licensed firearms dealers, and sale to the general public;

Further, IT IS ORDERED that ATF shall authorize PWA to lawfully sell and distribute PWA's 7N6 ammunition to federally licensed firearms dealers in the United States;

Further, IT IS ORDERED that ATF shall authorize PWA to lawfully import 7N6 ammunition pursuant to the previously approved Application and Permit for Importation of Ammunition Nos. 13-00760, 13-01216, and 14-00996 (Administrative Record 3-10); and

Further, IT IS ORDERED that ATF is prohibited from taking any action inconsistent with this Order.

DATED this ____ day of _____, 2016.

Honorable John C. Coughenour
UNITED STATES DISTRICT JUDGE

Presented by:

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By s/ *Patrick J. Preston*

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